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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

No. 241

LYDDON & COMPANY (AMERICA) INC.,
Petitioner

—vs.—

THE UNITED STATES,
Respondent.

## PETITIONER'S REPLY BRIEF

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### I

Respondent makes the unsupported assertion (Respondent's Brief, p. 7) that this case presents a question of "infrequent occurrence." The true importance of this case does not lie in speculation on whether the unexplained conduct of the Commissioner, as disclosed by the record here, will be of frequent or infrequent occurrence. Its importance lies in the fact that the decision below, if unreversed, will establish a procedure whereby tax officials can arbitrarily exact disputed amounts from taxpayers in disregard of their right to prepayment review in the Tax Court. Correct decision of this case is thus of prime importance in maintaining a revenue system which functions under law rather than administrative caprice.

## II

Respondent asserts (Respondent's Brief, p. 4) that this court's decisions in *Lewis* v. *Reynolds*, 284 U. S. 281 and *Stone* v. *White*, 301 U. S. 532, support the dismissal of the petition below. This is not correct. In both *Lewis* v. *Reynolds* and *Stone* v. *White*, the taxes for which refund was sought had been assessed before the statute of limitations on assessment expired, and neither Section 3770(a)(2) of the Internal Revenue Act of 1939 nor its predecessor, Section 607 of the Internal Revenue Act of 1928, were applicable. The basis of the present petition is that the taxes in suit were not assessed before the statute of limitations on assessment expired, that Section 3770(a)(2) controls and that under that Section petitioner is entitled to recover without proof of the facts pertaining to its substantive tax liability. Even the majority below rejected the Government's assertion that, in a suit under Section 3770(a)(2), the question of whether plaintiff overpaid its taxes is material (R. 106, 107).

Respectfully submitted,

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## Certificate of Service

I, Harold Manheim, counsel for petitioner in the foregoing petition for a writ of certiorari, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 9th day of September, 1958, I served copies of the foregoing ~~petition for a writ of certiorari~~ Reply Brief on the United States of America, Respondent, by causing copies thereof to be mailed in duly addressed envelopes, with postage prepaid, to The Attorney General, Department of Justice, Washington 25, D.C. and the Solicitor General, Department of Justice, Washington 25, D.C.

Dated, September 9th, 1958.

HAROLD MANHEIM,
Counsel for Petitioner.